

IN THE HIGH COURT OF BOMBAY AT GOA

MISC.CIVIL APPLICATION NO. 699 OF 2007

IN

SECOND APPEAL NO. 91 OF 2004

SHRI VAMAN N. SHETTY

... Applicant

Versus

SHRI VASUDEV T. SAWANT AMONKAR

... Respondent

Ms. Sapna Mordekar, Advocate for the applicant.

Mr. A.F. Diniz, Advocate for the respondent.

Coram:- R. S. MOHITE, J.

Date:- 11th October, 2007

P.C.

Heard both sides. This civil application is filed by the original appellant seeking the stay of the execution of the impugned judgment and decree dated 23.6.2004 passed by the Additional District Judge, Fast Track 2 in Regular Civil Appeal No.156/2003.

The record indicates that the impugned second appeal was admitted and on admission of the main second appeal an order was passed in C.A. No.232/2004 granting a conditional stay.

One of the condition imposed was that arrears of licence for @ Rs.400/- per month from 1.4.2001 till 31.8.2006, which party agree, comes to Rs.21,600/-, was to be paid by Demand Draft within 15 days from today. Admittedly, this is complied with and this amount was deposited by Demand Draft on 19.10.2005.

The second condition was that further payment of licence fee for the month of September, 2005 onwards should be regularly paid. The order

was self-operative and it was provided that if there were two consecutive defaults, the interim order shall stand discharged automatically without reference to the Court. The chart annexed with page 44 to the application clearly indicates that the default was more than 2 times and interim order thus came to an end.

After default, the execution proceeding was filed and therefore, this application was again made. It was sought to be contended that 3 cheques are dishonoured because they were all presented on the same day. Thereafter, 2 cheques have been honoured. It is also contended that cheques for the remaining months were handed over but not deposited. Handing over of cheques is seriously disputed. It is also contended that the market value of the licence premises should be 6,000/- per month. In my view, the following order will meet the ends of justice.

The stay of execution of the impugned judgment and decree in Second Appeal No.91/2004 is granted subject to following modified conditions which will supersede the conditions imposed earlier.

- a) The applicant will deposit an amount of Rs.36,000/- being licence fee which approximately half the market rate calculated @ Rs.3,000/- per month for the period from 1st October, 2007 till 30th September 2008 and will continue to deposit the amount of Rs.36,000/- on or before 10th October in respect of each succeeding year.
- b) The payment shall be made directly to the respondent only by Bank draft.
- c) It is made clear that payment will not be made by cheques as it has been found that 3 cheques issued in the past, have been dishonoured.
- d) It is further made clear that in case the appellant succeeds in the appeal and is held to be a tenant, in that case, the excess amount which has been paid, will be adjusted towards future rent. The amount in excess of Rs.400/- which has been deposited under this order, will be adjusted towards the future rent.

- e) The first payment of Rs.36,000/- will be made only by Bank draft within a period of 15 days from today.
- f) There is also further condition that there will be no storage of Kerosene outside the suit premises.

Application is disposed off with costs of Rs.1,000/- which will also be paid to the respondent within 15 days from today.

R. S. MOHITE, J.

SMA